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Article 7

Constitutional Law: Police Power: Price Fixing

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period; it also provided for a six-month notice of sale instead of the previous six-week notice. It was held that the law was merely procedural in nature, not taking from the mortgagee his remedy, but merely altering the remedy of enforcement. The Legislature has the power to repeal, amend, change or modify the proceedings in court, both as to past and future contracts, as long as the parties are left with a substantial remedy. *Bronson* v. *Kinzie,* 1 How. 311 (1843); *Tennessee* v. *Snead,* 96 U.S. 69, 24 L. Ed. 610 (1877).

FRANK J. ANTOINE.

CONSTITUTIONAL LAW—POLICE POWER—PRICE FIXING.—A law passed by the New York state legislature (Laws of 1933, c. 158) declared that the milk industry was one of paramount importance to the people of the state; that a present emergency existed in the industry; and founded a control board with the power to license dealers and fix minimum prices. The statute also provided a criminal sanction for violation. A dealer sold milk for a price lower than that fixed by the control board and was criminally prosecuted for the violation. The defense brought the constitutionality of the law into question. *Held,* the law is constitutional. *People of New York* v. *Nebbia,* 262 N.Y. 259, 186 N.E. 694 (1933).

The police power of the state may be invoked to regulate an industry only when the industry is of primary importance, *New State Ice Co.* v. *Liebmann,* 285 U.S. 262, 52 Sup. Ct. 371, 76 L.Ed. 747 (1931), or when there is an emergency situation. *Marcus Brown Holding Co.* v. *Feldman, et al.,* 256 U.S. 170, 41 Sup. Ct. 465, 65 L. Ed. 877 (1920).; *Black* v. *Hirsch,* 256 U.S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865, 16 A.L.R. 165 (1920). The police power itself is concerned with protecting the lives, health, comfort and peace of all persons and of all property within the state, *Missouri Pacific R. Co.* v. *Finley,* 38 Kan. 550, 16 P. 951 (1888), and the 14th Amendment does not interfere with the exercise of this power in a reasonable way for such purposes. *Powell* v. *Pennsylvania,* 127 U.S. 678, 8 Sup. Ct. 992, 22 L. Ed. 253 (1887).

What constitutes an industry which is sufficiently related to the public interest to warrant its regulation by the state is not limited to any fixed set of characteristics or facts. "Plainly circumstances may so change in time or so differ in space as to clothe with such an interest what at other times or in other places would be a matter of purely private concern." *Block* v. *Hirsch,* supra.

The field of regulation has spread from the more traditional "public utilities" into a variety of industries, for example; bill boards, *St. Louis Poster Advt. Co.* v. *City of St. Louis, et al.,* 246 U.S. 269, 39 Sup. Ct. 274, 63 L. Ed. 599 (1918); rents during an emergency in housing facilities, *Block* v. *Hirsch,* supra; insurance rates, *German Alliance Insurance Co.* v. *Lewis,* 233 U.S. 389, 34 Sup. Ct. 612, 56 L. Ed. 1011, L.R.A. 1915 C (1913); cotton gins, *W. A. Frost* v. *Corporation Commission of the State of Oklahoma,* 278 U.S. 515, 49 Sup Ct. 235, 73 L. Ed. 983 (1928); hours worked by miners, *Holden* v. *Hardy,* 169 U.S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780 (1897). The New York court justified the regulation of the price of milk on two grounds. First, that the continuous supply of wholesome milk to the cities is vital to the public welfare. Cf. *People* v. *Chris Teuscher,* 248 N.Y. 454, 162 N.E. 484 (1928). Second, that the low prices paid to milk producers resulted in unrest and dissatisfaction which amounted to an emergency. The continuity of supply or the price at which a commodity is sold is not important enough to the public welfare to justify regulation. *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U.S. 522, 43 Sup. Ct. 630, 67 L. Ed.

1103, 27 A.L.R. 1280 (1922). By the declaration of the emergency the court takes the control of milk out of this class.

The use of the police power must be reasonable and necessary, connected directly with the public welfare. *Lochner* v. *N. Y.,* 198 U.S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937 (1904). Any interference with private rights which is unreasonable and unneeded is deprivation of property without due process of law and is void under the 14th Amendment. *State Freight Tax Case,* 15 Wall. 232, 21 L. Ed. 146 (1872). The mere declaration by the legislature that a given industry is of public concern is not sufficient to make it so. It is subject to judicial review. *Tyson & Bro.* v. *Banton,* 273 U.S. 418, 47 Sup. Ct. 426, 71 L. Ed. 718, 58 A.L.R. 1236 (1926); *Wolff Packing Co.* v. *Court of Industrial Relations,* supra. The courts will follow the judgment of the legislature as far as possible wherever the statute aims to stimulate the production of a vital food by price fixing, and will interpret it liberally according to the purpose of the legislature. *Austin* v. *City of New Court,* 258 N.Y. 113, 179 N.E. 313 (1921).

The court distinguished between the control of the price of milk and the control of the number of ice plants in Oklahoma, *New State Ice. Co.* v. *Liebman,* supra, on the grounds that the Oklahoma statute tended to set up monopolies which the New York statute does not do.

CAROLINE AGGER.

CORPORATIONS—COMPENSATION OF OFFICERS—BONUSES.—Plaintiff brought action as a minority stockholder to have defendants, officers of the corporation, account for amounts paid them under a 1912 by-law authorizing the diversion to six senior officers of ten per cent of any annual profits in excess of those realized in 1910, and that such payments be enjoined. It was shown the capital of the company since 1910 had more than doubled; profits had increased fivefold; that under this by-law over ten million dollars had been distributed to the executives since 1921; that in 1930 the president received a cash bonus of more than $842,000 in addition to a stipulated salary of $168,000 and "special credits" of $273,470; that the directors, to insure continuance of employees' zeal, put through several stock subscription plans, the benefits of which had accrued in large part to the inaugurators, the plans being at no time revealed to the stockholders; inter alia. In March, 1931, after a demand for an accounting to the company and a refusal to comply, plaintiff brought suit in the Supreme Court of New York; thereafter the suit was removed to the federal court for the Southern District of New York whose temporary injunction was reversed with direction to dismiss the suit by the Cicuit Court of Appeals. [60 F. (2d) 109 (C.C.A. 2d, 1932]. On writ of certiorari. *Held,* reversed. The by-law could not be used to justify payments to the officers of sums so large as in substance and effect to amount of spoilation or waste of corporate property, over the protest of a stockholder, and the lower court is warranted to determine whether and to what extent such payments constituted misuse and waste. *Rogers* v. *Hill, et al.,* 53 Sup. Ct. 731, 77 L. Ed. 945 (1933).

A bonus is not a gift or gratuity, but a sum paid for services, or upon a consideration or in addition to that which would ordinarily be given. *Steeple* v. *Max Kuner Co.,* 121 Wash. 47, 208 Pac. 44 (1922), quoting *Kennicott* v. *Wayne County Sup'rs,* 16 Wall. 452, 21 L. Ed. 319 (1873). The contract to pay an officer additional compensation in the way of a bonus may be either express or implied. *Church* v. *Harnit,* 35 F. (2d) 499 (C.C.A. 6th, 1929). It is well settled that corporations, generally through their boards of directors, may pay or prom-